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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,322	03/16/2004	Billy H. Brenton	BRER.01US01	3739

27479 7590 04/20/2007
COCHRAN FREUND & YOUNG LLC
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FORT COLLINS, CO 80525

EXAMINER

NGUYEN, PHONG H

ART UNIT	PAPER NUMBER
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3724

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/802,322

Applicant(s)

BRENTON, BILLY H.

Examiner

Phong H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-14,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-14,16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, 8, 10, 11, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolen (590,330) in view of Borah (2,421,238).

Nolen teaches a scissors comprising a first shaft, a second shaft, a pin (a3), an adjustable thumb ringlet (a2) and a second pin (r). See Figs. 1-3 and 6.

Nolen does not teach the pin (a3) being flexible.

Borah teaches the use of a flexible pin 24 to connect separate parts together. See Fig. 3. Therefore, it would have been obvious to one skilled to replace Nolen's pin with Borah's flexible pin for easily securing the thumb ringlet to the handle portion.

Regarding claims 2 and 12, the modified scissors of Nolen teaches the invention substantially as claimed except for the material of the pin (a3).

To select a well known material such as thermoplastic polymers for Borah's pin would have been obvious to one having ordinary skill in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

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3. Claims 1, 3-5, 8, 10, 11, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolen in view of Borah as applied to claim 1 above, and further in view of Earnest et al. (3,374,541), hereinafter Earnest.

Regarding claims 1, 5, 8, 10, 11, 13 and 16, Nolen teaches a scissors comprising a first shaft, a second shaft, a pin (a3), an adjustable thumb ringlet (a2) and a second pin (r). See Figs. 1-3 and 6.

Nolen does not teach the pin (a3) being flexible.

Borah teaches the use of a flexible pin 24 to connect separate parts together. See Fig. 3. Therefore, it would have been obvious to one skilled to replace Nolen's pin with Borah's flexible pin for easily securing the thumb ringlet to the handle portion.

Regarding claims 3 and 4, Nolen teaches the invention substantially as claimed except for the thumb ringlet in Fig. 1 having an opening facing upward.

Earnest teaches providing an opening 13 facing upward in a thumb ringlet to comfortably fit fingers of varying girth. See Figs. 1-3. Therefore, it would have been obvious to one skilled in the art to provide the thumb ringlet of Nolen an opening facing upward as taught by Earnest to comfortably fit fingers of varying girth.

4. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolen in view of Borah as applied to claim 1 above, and further in view of Mock (6,131,291).

The modified scissors of Nolen teaches the invention substantially as claimed except for a means for adjusting the force between opposing cutting portions (A, B) of the scissors.

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Mock shows a pair of shears comprising means (20,50) for adjusting the force of the shear blades (see column 3, line 66 to column 4, line 1).

Therefore, it would have been obvious to one skilled in the art to further modify Nolen's scissors by providing the scissors with a force adjusting means to facilitate adjusting the ride of the blades as taught by Mock.

5. Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolen in view of Borah as applied to claim 1 above, and further in view of in view of Brenton (5,469,624).

The modified scissors of Nolen teaches the invention substantially as claimed except for a finger stabilizer.

Brenton shows a pair of scissors comprising a finger stabilizer disposed in the vicinity of a finger ringlet (26, see Fig. 1a).

Therefore, it would have been obvious to one skilled in the art to modify Nolen's scissors by providing the finger ringlet (B3) with a finger stabilizer for supporting a user's finger when in use as taught by Brenton.

Response to Arguments

6. Applicant's arguments filed 03/13/2007 have been fully considered but they are not persuasive.

The Applicant argues that the flex attributed to the fastener of Borah by the Examiner as being longitudinal, is not longitudinal, but radial. This argument is not

persuasive. Claims 1 and 10 do not claim the direction of the flex. Therefore, the combination of Nolen and Borah reads on claims 1 and 10.

The Applicant argues that Borah specifies only a slight degree of resilience of the pin. This argument is not persuasive. Claims 1 and 10 do not claim the degree of resilience of the pin. Therefore, the combination of Nolen and Borah reads on claims 1 and 10.

The Applicant argues that the fastener of Borah cannot be inserted into the hole in the thumb ring and the handle in Nolen since a wooden or plastic fastener could not deform the sheet metal parts of Nolen. This argument is not persuasive. There is no need to deform those sheet metal parts in the combination of Nolen and Borah so that the Borah's pin can be inserted into the holes in Nolen. The slot 31 allows the head 36 to reduce its diameter when the fastener squeezes in the hole in the thumb ring and the handle in Nolen. As the fastener passes through the holes, the head 36 flexes out to engage the bottom portion of the handle which rotatably locks the thumb ring and the handle together.

The Applicant argues that a solid fastener must be used in Nolen. This argument is not persuasive. A solid pin or a hollow pin can be used to rotatably lock the thumb ring and the handle together.

The Applicant argues that Borah teaches away from the combination since Borah's fastener would not fit into the hole in the ring thumb and the handle. This argument is not persuasive. As the fastener passes through the holes, the head 36 flexes

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out to engage the bottom portion of the handle which rotatably locks the thumb ring and the handle together.

The Applicant argues that the Examiner has not properly used the motivation. This argument is not persuasive. The motivation is clearly provided in the rejection under 35 USC 103 (a).

The Applicant argues that the Examiner has used hindsight in the combination. This argument is not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phong H. Nguyen whose telephone number is 571-272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

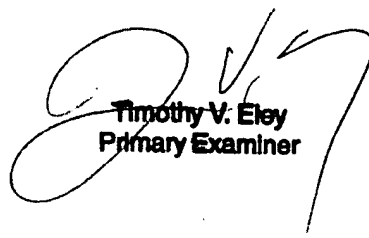
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PN:

A handwritten signature, possibly reading 'm', written in black ink.

April 2, 2007

A large, stylized handwritten signature in black ink, appearing to be 'Timothy V. Eley'.

Timothy V. Eley
Primary Examiner